IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

CRL.REF.No. 4 of 2007()

SC.701/2004 of ADDITIONAL DISTRICT & SESSIONS COURT (ADHOC), THODUPUZHA, CRIME NO.248/01 OF IDUKKI POLICE STATION

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APPELLANTS/COUNTER PETITIONERS.

ON THE BASIS OF THE REPORT OF THE ADDITIONAL DISTRICT & SESSIONS COURT (ADHOC), THODUPUZHA

RESPONDENTS:

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL REFERENCE HAVING COME UP FOR ADMISSION ON 25/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

Criminal Reference No.4 of 2007

Dated this the 25th day of January 2007

O R D E R

This criminal reference has been registered on the basis of a report from the Additional District & Sessions Judge, Adhoc-I, Thodupuzha through the learned Sessions Judge, Thodupuzha. It is reported that the incident in this case had taken place on 20/12/2001. The crime is registered interalia under Section 307 I.P.C. The fourth accused in the crime is a juvenile, he having been born on 25/4/1984. Ignoring and overlooking that fact, the case was committed to the court of Sessions with the fourth accused in the array of accused as per the order of committal passed by the Judicial First Class Magistrate's Court, Idukki. On realising that the committal is bad in law, the Sessions Court which was seized of the matter has made this reference.

2. There cannot possibly be any dispute after Prathap Singh v. State of Jharkhand and Another (2005) 3 SCC 551 that the relevant date to ascertain the applicability of the provisions of the Juvenile Justice Act is the date of commission of the offence. So reckoned, the alleged offender/fourth accused was a

juvenile/child on the date of the occurrence. When such a person/accused was produced before the learned Magistrate, he must have followed the procedure under Section 7 of the Act. At any rate, in the light of the mandate of Section 18, there can be no joint trial of the juvenile with other adult offenders. Order of committal is, in these circumstances, clearly bad and unsustainable in law. The learned Magistrate must have proceeded under Section 7 of the Act and forwarded the juvenile offender to the Juvenile Justice Board, if one which has been constituted by now and if not, to the learned Chief Judicial Magistrate of the District to be dealt with under the provisions of the Juvenile Justice Act.

3. The committal orders, in so far as it relates to the fourth accused/juvenile therefore deserves to be quashed. Ideally, the matter must be sent back to the learned Magistrate to take necessary action under Section 7 of the Act but the offender being a juvenile, in the interest of expedition, I direct that the learned Additional District & Sessions Judge, Adhoc-1, Thodupuzha to direct the fourth accused/juvenile to appear before the Juvenile Justice Board if one has been constituted and

if not before the learned Chief Judicial Magistrate on a date to be specified. The Juvenile Justice Board / the learned Chief Judicial Magistrate shall thereafter proceed in accordance with the provisions of the Juvenile Justice Act.

4. This criminal reference is thus answered. Communicate a copy of this order forthwith to the learned Magistrate.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006